

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2018-014

**TO:** Donna Gaukler; Shirley Kinsey; Mayor John Engen; City Council; Dale Bickell; Mike Brady; Scott Hoffman; Mike Colyer; Chris Odlin; Richard Stepper; Laurie Clark; Marty Rehbein; Kirsten Hands; Kelly Elam; Morgan Valiant; Elizabeth Erickson; Betsy Willet; Becky Goodrich

**CC:** Department Attorney

**FROM:** Jim Nugent, City Attorney

**DATE** August 8, 2018

**RE:** Generally unlawful to discharge guns, pistols, rifles, shotguns, handguns other firearms inside city limits, except at approved shooting ranges or in legal defense of person or property. Montana cities are empowered to prevent and suppress the carrying of concealed or unconcealed weapons to a park under the jurisdiction of the Montana city.

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### **FACTS:**

Recently city parks and recreation staff expressed concern about the damage that BB, air or pellet gun discharges cause in city parks and open space areas and inquired about potential regulations of such weapons. City park department staff interest in prohibiting the possession of BB, air or pellet guns in city parks and open space lands was expressed.

### **ISSUE(S):**

What does Montana state law provide with respect to the discharge of guns, pistols, rifles, shotguns, handguns or other firearms inside the limits of any Montana city or town or the regulation of the possession of weapons in public parks under the jurisdiction of a city?

### **CONCLUSION(S):**

Pursuant to section 45-8-343 MCA it is generally unlawful for a person to willfully shoot or fire off a gun, pistol, or any other firearm within the limits of any city or town, except at approved shooting ranges or in the justifiable legal defense of person or property. Also, section 45-8-351 MCA provides that for public safety purposes a Montana city or town may regulate the discharge of rifles, shotguns, and handguns. Pursuant to 45-8-351 MCA Montana cities also may prevent

and suppress the carrying of concealed or unconcealed weapons in public parks under the jurisdiction of the city.

### **LEGAL DISCUSSION:**

Montana state law regulates the firing of firearms inside the city limits of a Montana city or town. Section 45-8-343 MCA generally provides that every person who willfully shoots off a gun, pistol, or any other firearm inside the city limits may be punished by a fine or imprisonment, except when discharged at an approved shooting range or in justifiable legal defense of person or property. Section 45-8-343 MCA provides:

“45-8-343. FIRING FIREARMS. (1) Except as provided in subsections (2) and (3), every person who willfully shoots or fires off a gun, pistol, or any other firearm within the limits of any town or city or of any private enclosure which contains a dwelling house is punishable by a fine not exceeding \$25 or such greater fine or a term of imprisonment, or both, as the town or city may impose. (2) Firearms may be discharged at an indoor or outdoor rifle, pistol, or shotgun shooting range located within the limits of a town or city or in a private dwelling if the shooting range is approved by the local governing body. (3) Subsection (1) does not apply if the discharge of a firearm is justifiable under Title 45, chapter 3, part 1.”

Title 45, chapter 3, part 1 MCA that is cross referenced to in subsection 45-8-343(3) MCA above is entitled “JUSTIFIABLE USE OF FORCE.”

In addition, subsection 45-8-351(2) MCA, set forth later herein, in its first sentence provides that: “FOR PUBLIC SAFETY PURPOSES, A CITY or town MAY REGULATE THE DISCHARGE OF RIFLES, SHOTGUNS, AND HANDGUNS.” (emphasis added). The Missoula City Council has made it generally unlawful to discharge a firearm inside the Missoula city limits pursuant to section 9.62.020 Missoula Municipal Code, which provides:

“9.62.020. DISCHARGE OF FIREARMS WITHIN CITY DECLARED UNLAWFUL-EXCEPTION. No person shall shoot or discharge any pistol, rifle or other firearm within the city, except when done in the lawful defense of the person, property or family, or by a law enforcement officer in the necessary enforcement of the law, or in a regularly organized and supervised firing range. NO PERSON SHALL UNDER ANY CIRCUMSTANCES, FIRE OR DISCHARGE A SPRING OR AIR RIFLE, AIR PISTOL OR PELLET GUN WITHIN THE CITY, except a law enforcement officer in the necessary enforcement of the law. No person shall under any circumstances, shoot, fire, release or discharge any slingshot or similar device within the city.” (emphasis added)

The term “firearms” is not defined in Montana state law. Black’s Law Dictionary, Eighth Edition, page 666 defines a firearm as meaning:

“firearm. A weapon that expels a projectile (such as a bullet or pellets) by the combustion of gunpowder or other explosive.”

Section 45-8-351 MCA expressly authorizes a Montana city to prevent and suppress the carrying of concealed or unconcealed weapons in parks under the jurisdiction of the city. Section 45-8-351 MCA provides:

**“45-8-351. RESTRICTION ON LOCAL GOVERNMENT REGULATION OF FIREARMS.** (1) Except as provided in subsection (2), a county, city, town, consolidated local government, or other local government unit may not prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay in purchase, sale, or other transfer), ownership, possession, transportation, use, or unconcealed carrying of any weapon, including a rifle, shotgun, handgun, or concealed handgun.

(2) (a) **FOR PUBLIC SAFETY PURPOSES A CITY OR TOWN MAY REGULATE THE DISCHARGE OF RIFLES, SHOTGUNS. AND HANDGUNS.** A county, CITY, town, consolidated local government, or other local government unit HAS POWER TO PREVENT AND SUPPRESS THE CARRYING OF CONCEALED OR UNCONCEALED WEAPONS TO A PUBLIC ASSEMBLY, PUBLICLY OWNED BUILDING, PARK UNDER ITS JURISDICTION, or school, and the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens , and minors.

(b) Nothing contained in this section allows any government to prohibit the legitimate display of firearms at shows or other public occasions by collectors and others to prohibit the legitimate transportation of firearms through any jurisdiction, whether airports or otherwise.

(c ) A local ordinance enacted pursuant to this section may not prohibit a legislative security officer who has been issued a concealed weapon permit from carrying a concealed weapon in the state capitol as provided in 45-8-317.”  
(emphasis added)

Basically a weapon is defined as being an instrument used or designed to be used to injure or kill someone. Subsection 45-2-101(79) MCA of Montana’s criminal code defines the term “weapon” as meaning

“(79) ‘Weapon’ means an instrument, article, or substance that regardless of its primary function, is readily capable of being used to produce death, or serious bodily injury.”

Pursuant to the Montana state criminal code definition of “weapon” set forth in subsection 45-2-101(79) MCA, as well as pursuant to the power granted to Montana local governments pursuant to subsection 45-8-351(2) MCA the City of Missoula has the power to prohibit the carrying of BB guns, air pistols, pellet guns, etc. in public parks under the jurisdiction of the City of Missoula. Further, as landowner of public lands, the City of Missoula has inherent authority as landowner to prohibit BB guns, air pistols, pellet guns, etc. on lands that the City owns.

**CONCLUSION(S):**

Pursuant to section 45-8-343 MCA it is generally unlawful for a person to willfully shoot or fire off a gun, pistol, or any other firearm within the limits of any city or town, except at approved shooting ranges or in the justifiable legal defense of a person or property. Also, section 45-8-351 MCA provides that for public safety purposes a Montana city or town may regulate the discharge of rifles, shotguns, and handguns. Pursuant to 45-8-351 MCA Montana cities also may prevent and suppress the carrying of concealed or unconcealed weapons in public parks under the jurisdiction of the city.

OFFICE OF THE CITY ATTORNEY

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Jim Nugent, City Attorney

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